Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

No. 80-694

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

OPREL WOOD,
Petitioner,

versus

DORIS LEE WOOD,
Respondent.

On Petition for a Writ of Certiorari to
The Supreme Court of Florida

PETITION FOR CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Was Petitioner deprived of due process of law, guaranteed by the *Constitution of the United States*, by being refused his right to be heard?

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No.

IN THE
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OCTOBER TERM, 1980

OPREL WOOD,

Petitioner,

versus

DORIS LEE WOOD,

Respondent.

On Petition for Writ of Certiorari to
The Supreme Court of Florida

PETITION FOR CERTIORARI

Petitioner, OPREL WOOD, prays a Writ of Certiorari issue to review the Order of the Florida Supreme Court, entered on August 5, 1980, denying Petition for Writ of Certiorari addressed to that Court.

OPINIONS BELOW

The Order of the Florida Supreme Court denying Certiorari is set out at pages 7a-8a of the Appendix

hereto. The Order of the Second District Court of Appeal affirming the Trial Court's action is set out at pages 6a-7a of the Appendix, and the Order of the Trial Court is set out in the Appendix at pages 1a-3a.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to *Rule 17(1)(b)* and *17(1)(c), Rules of the Supreme Court of the United States,* and *28 U.S.C. 1257(3).* Petitioner asserts deprivation of due process rights secured by the Constitution of the United States.

CONSTITUTIONAL PROVISION INVOLVED

The *Constitution of the United States, Amendment XIV,* provides:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; . . ."

STATEMENT OF THE CASE

Petitioner and Respondent were divorced from each other by Final Judgment entered on February 1, 1978, ending a five year marriage between a 64 year old man and a 43 year old woman.

The husband, Petitioner here, was not present at the trial at which the marriage was dissolved. He promptly thereafter complained that his absence was improperly procured by his estranged wife, Respondent here, who had advised him that the trial was continued. Petitioner further contended that his attorney failed to call him to confirm that the trial was not in fact continued. Motion for Rehearing was, nevertheless, denied. (Pg. 4a)

Petitioner then filed a Complaint for Relief From Final Judgment. (Pg. 8a-14a) The Respondent then filed a Motion to Dismiss, which Motion was granted, without prejudice. (Pg. 1a-3a)

Petitioner then filed a Motion for Rehearing and to Consolidate. (Pg. 17a-19a) Respondent filed a Motion to Strike the latter pleading, and on hearing, the wife's Motions were denied. (Pg. 5a-6a) Appeal was thereafter taken to the District Court of Appeal, Second District of Florida, which Appeal was culminated in an Order affirming the Trial Court. (Pg. 6a-7a)

Petitioner then sought a Writ of Certiorari from the Florida Supreme Court, which effort was likewise denied. (Pg. 7a-8a)

Petitioner contended below and here contends that he has never had his day in Court, and that he has been consistently denied organically guaranteed due process of law.

WHY WRIT SHOULD ISSUE

In *Goldberg v. Kelly,* 397 U.S. 254, 25 L.Ed.2d 287, 90 S.Ct. 1011 (1970), this Tribunal promulgated a proposition of fundamental law which is particularly apropos here, saying:

> "The fundamental requisite of due process of law is the opportunity to be heard. . . . The hearing must be at a meaningful time and *in a meaningful manner.*" (Emphasis supplied)

That proposition was subsequently amplified by this Court in *Boddie v. Connecticut,* 401 U.S. 371, 28 L.Ed.2d 113, 91 S.Ct. 780 (1971), when this Court said:

> ". . . due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a *meaningful opportunity to be heard.*" (Emphasis supplied)

That case further went on to hold that such opportunity must be at:

> ". . . a meaningful time and in a meaningful manner . . . for a hearing appropriate to the case."

First, the Respondent sub judice should not have been permitted to profit from her own improper conduct in advising the husband that the hearing had been cancelled. Additionally, the Petitioner should not be thereby deprived of his day in Court or by the failure of trial counsel to inform him that the hearing had, in fact, not been cancelled. Next, and of signal import, when the Trial Court dismissed Petitioner's Complaint for Relief from Final Judgment for the reason that it did not allege a fraud on the Court, such action flew squarely in the face of the *Fourteenth Amendment* to the *Constitution of the United States,* which prohibits a State from making or enforcing any law which shall abridge the privileges or immunities of the citizens of the United States! The Trial Court would worship at the altar of expediency in so ruling, at the expense of Petitioner's organic right to due process of law. Undeniably, Petitioner was denied a meaningful hearing in his divorce case by the Respondent's devious and convoluted representations that the matter had been continued. That denial was compounded by failure of his trial counsel to advise Petitioner that the trial had not been continued. The Trial Court had ample opportunity to rectify that organic deprivation by granting rehearing, the Motion for which were twice denied by that Court! Yet additional opportunities were afforded the Trial Court to afford Petitioner a meaningful hearing when Petitioner filed his Complaint for Relief From Final Judgment, and again when Petitioner filed his Motion for Rehearing and to Consolidate. However, both were denied by the Court!

In *Edelberg v. Illinois Racing Board*, 540 F.2d 279 (7th CCA 1976), the Seventh Circuit Court of Appeals, alluding to the due process clause of the *Fourteenth Amendment*, said that such:

> ". . . the Constitutional protection is not to be avoided by the simple label a state chooses to fasten upon its conduct or statute."

In that vein, *Rule 1.540(b), Florida Rules of Civil Procedure*, provides a method for relief from a Judgment which was procured, inter alia, by fraud. That Rule, however, provides that a motion for relief must be filed within one year, or a separate action might be thereafter entertained for relief, but only from fraud upon the Court. This exalts the Court and neglects the basic rationale that the Court exists for the benefit of the litigants, not vice versa! It permits, and has here permitted, the Trial Court to sacrifice Federally guaranteed constitutional rights of individuals in the interest of judicial expediency.

If due process is to be equated to fundamental fairness, the latter concept cries out at the injustice and inherent unfairness of permitting the Respondent to profit by falsely apprising the Petitioner that the trial was cancelled, thereby procuring his nonattendance. The governmental action inherent in the Trial Court's subsequent denials of Petitioner's efforts to be heard clearly, unequivocally and undeniably foreclosed Peti-

tioner's Federally guaranteed organic right to due process of law.

CONCLUSION

On the foregoing observations, argument and authorities, we respectfully urge that Petitioner's deprivation of his Federally guaranteed organic right to due process of law has been unqualifiedly demonstrated, and that his Petition for Writ of Certiorari to the Supreme Court of Florida should be granted.

Respectfully submitted,

ROBERT E. PYLE, P.A.

ROBERT E. PYLE
Post Office Box 557
Lake Alfred, Florida 33850
Telephone: (813) 956-1852

Attorney of Record for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that three copies of the foregoing Petition for Writ of Certiorari to the Supreme Court of Florida have been mailed, postage prepaid, to L. Guerry Dobbins, Jr., Post Office Box 851, Lakeland, Florida 38802.

I further certify that all parties required to be served have been served.

This the ____ day of October, 1980.

_____

ROBERT E. PYLE

APPENDIX

IN THE CIRCUIT COURT OF
THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

OPREL WOOD,

Plaintiff,

versus No. GC-G-78-3392

DORIS LEE WOOD,

Defendant.

ORDER

A hearing on the defendant's Motion to Dismiss was held March 9, 1979. The plaintiff was represented by A. H. Lane, Esq. and the defendant was represented by L. Guerry Dobbins, Esq.

The above-styled cause is an independent action to set aside, as having been obtained by fraud on the court, a Final Judgment dissolving the marriage of the two parties. The Motion to Dismiss claims that the allegations of the Complaint fail to state a cause of action for fraud on the court.

Rule 1.540(b), Rules of Civil Procedure, was designed to provide a party with a convenient and orderly

method of attacking a final judgment after the time for appeal had expired. The rule contemplates that the relief on the grounds therein enumerated will be applied for by a motion filed in the same proceeding in which the questioned judgment is entered. One of the grounds enumerated is "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party". An exception to this procedure is provided wherein a party may institute an independent action to set aside a final judgment obtained by fraud on the court. The rule clearly intends to distinguish "fraud" from "fraud on the court"; the former must be alleged in the same action and the latter may be alleged in an independent action.

The gravamen of the Complaint in the instant case is that the defendant/wife fraudulently misrepresented and failed to disclose material facts in her testimony at the final hearing of the original action. There is no allegation that the alleged fraud misled the court as to its jurisdiction over the persons or subject matter, nor does it allege that the fraud prevented the plaintiff/husband from effectively presenting a defense based upon the same facts set before the court via the independent action. *See Alexander v. First National Bank of Titusville*, 275 So.2d 272 (Fla. 4 DCA 1973). I believe that the Complaint alleges fraud, not fraud on the court. These issues should be, or should have been, litigated in the original action. Therefore, it is

ORDERED:

1. That the Motion to Dismiss is GRANTED.

2. That the Complaint is dismissed without prejudice.

DONE AND ORDERED at Bartow, Polk County, Florida, this 19th day of March, 1979.

/s/ DENNIS P. MALONEY
DENNIS P. MALONEY
Acting Circuit Judge

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

IN RE: THE MARRIAGE OF
DORIS LEE WOOD,

Wife,

and Case No. F-77-2574

OPREL WOOD,

Husband.

Filed: January 25, 1978

ORDER DENYING PETITION FOR REHEARING

At the final hearing in this cause Friday, January 20, 1978, the respondent, husband failed to appear and the Court inquired of his counsel as to whether he expected the respondent husband to be present, and whether the husband had been advised of the hearing.

Counsel for husband advised the Court that on the day prior to the final hearing he, the attorney, advised the husband of the time, date and place of the hearing and he expected him to be present. Further, at the hearing, upon request of husband's counsel for a continuance, the Court denied it. Counsel was told that in the event the husband had some good cause and excusable reason why he failed to appear, the Court would consider the taking of further testimony herein.

In view of the above, the motion for rehearing does not set forth adequate grounds, or good cause for the Court to re-hear or further consider the evidence heard at the final hearing. Said motion be, and the same is hereby denied.

DONE AND ORDERED in Chambers at Winter Haven, Polk County, Florida, this the 23rd of January, 1978.

/s/ GUNTER STEPHENSON
GUNTER STEPHENSON
Circuit Judge

ORDER

Plaintiff's Motion for Rehearing and Motion to Consolidate were heard in chambers on April 10, 1979. The plaintiff was represented by A. H. Lane, Esq., and the defendant was represented by L. Guerry Dobbins, Jr., Esq.

After consideration of the argument of counsel and the applicable case and statutory authority, it is

ORDERED AND ADJUDGED:

1. That the Motion for Rehearing is DENIED.

2. That the Motion to Consolidate is DENIED.

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

OPREL WOOD,

Plaintiff,

versus No. GC-G-78-3392

DORIS LEE WOOD,

Defendant.

DONE AND ORDERED at Bartow, Polk County, Florida, this 25th day of April, 1979.

/s/ DENNIS P. MALONEY
DENNIS P. MALONEY
Acting Circuit Judge

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION AND,
IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, SECOND DISTRICT

OPREL WOOD,

Appellant,

versus Case No. 79-982

DORIS LEE WOOD,

Appellee.

Opinion filed December 20, 1979.

Appeal from the Circuit Court for Polk County; Dennis P. Maloney, Judge.

A. H. Lane of Lane, Massey, Trohn, Clarke, Bertrand & Smith, Lakeland, for Appellant.

L. Guerry Dobbins, Jr., Lakeland, for Appellee.

PER CURIAM:

Affirmed.

GRIMES, C.J., BOARDMAN and DANAHY, JJ., Concur.

SUPREME COURT OF FLORIDA

Tuesday, August 5, 1980

ORPEL WOOD,

Petitioner,

versus Case No. 58,509

DORIS LEE WOOD,

Respondent.

District Court of Appeal, 2nd District
Case No. 79-982

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Fla. R. App. P. 9.120, and it appearing to the Court that it is without jurisdiction, it is ordered that certiorari is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

SUNDBERG, C.J., ADKINS, BOYD, OVERTON and McDONALD, JJ., concur.

A True Copy
TEST:

Sid J. White
Clerk Supreme Court.

/s/ Nancy E. Ryals
Deputy Clerk

IN THE CIRCUIT COURT OF
THE TENTH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR POLK COUNTY

OPREL WOOD,

Plaintiff,

versus GCF-77-2574

DORIS LEE WOOD,

Defendant.

COMPLAINT FOR RELIEF FROM FINAL JUDGMENT

The Plaintiff, OPREL WOOD, sues the Defendant, DORIS LEE WOOD, alleging as follows:

1. On February 1, 1978, the Circuit Court for Polk County, Florida, entered its Final Judgment for dissolution of the marriage following trial on January 20th, 1978. (A copy of the final judgment is attached hereto marked Exhibit "A").

2. The court thereafter denied the two timely served Motions for Rehearing, which were grounded on the Plaintiff's failure to attend the trial as a result of his misunderstanding with his attorney and the misrepresentation of the Defendant to him that the trial would be continued.

3. The Plaintiff was sixty-four (64) years of age and the Defendant was forty-three (43) years of age at the date of entry of the Final Judgment which dissolved the marriage of the parties contracted on December 2, 1972.

4. The Final Judgment among other things:

(a) Found the Defendant to have a special equity in and to the marital home located at 1610 Lakewood Road, Lakeland, Florida and awarded the equity of the Plaintiff in and to that real property located in Polk County, Florida described as follows:

> The South 235 feet of the West ½ of the East ½ of the Northwest ¼ of the Southeast ¼ of Section 20, Township 27 South, Range 24 East Polk County, Florida; less the East 25 feet

thereof; and less the West 15 feet thereof; subject to road rights-of-way and utility easements;

together with the furniture, fixtures and appliances located therein, save and except those items of personal and sentimental value to the Plaintiff.

(b) Awarded to the Wife, as rehabilitative alimony, the sum of Two Hundred Fifty ($250.00) dollars per month for a period of two (2) consecutive years.

(c) Required the Plaintiff to pay the Wife's attorneys fees and court costs.

5. The foregoing findings and resulting Judgment of the Court were based solely on the testimony and evidence presented by the Defendant. Her testimony and evidence contained material fraudulent misrepresentations and fraudulently failed to disclose material facts relating to the source of monies brought to and earned by the Plaintiff during the course of the marriage in the following particulars:

(a) In November, 1972, prior to the marriage of the Plaintiff and Defendant on December 2, 1972, the Plaintiff sold his business, AIRCRAFT ENGINEERING CO., Indianapolis, Indiana for $438,000.00. Most of that sum was utilized to pay outstanding debts and obligations of the firm, but the Plaintiff was given a one (1) year employment contract with the purchaser for

$25,000.00, which was paid to him in monthly installments through November, 1973 and devoted to the use and benefit of both parties.

(b) At the time of the marriage on December 2, 1972, the Plaintiff owned a home in Indianapolis, Indiana which he conveyed to himself and the Defendant, as husband and wife, after the marriage. The home was sold on May 16th, 1974 from which the parties received the net sum of $28,572.96, which sum was deposited to the joint account of the parties.

(c) At the time of the marriage on December 2, 1972, the Plaintiff owned two (2) houses in Indianapolis, Indiana, which were sold on July 30th, 1974, from which the Plaintiff received the net sum of $26,948.98 and which sum was deposited to the joint account of the parties.

(d) On April 24, 1973, the Plaintiff received the sum of $3,140.77 on closeout of the sale of his business, AIRCRAFT ENGINEERING CO., which sum was paid down for the purchase of a 1973 Cadillac. Through some means unknown to Plaintiff, the automobile was titled to the Defendant, although the balance of the purchase was paid from the joint account of the parties, to which the Plaintiff was the principal contributor.

(e) The Plaintiff was employed at all times during the marriage, except for the period from June 8th, 1976

to August 23, 1976 at which time he was employed by Piper Aircraft, Lakeland, Florida and the Plaintiff contributed all earnings to the joint account of the parties.

(f) Upon sale of a tractor trailor, in 1976, which he had been driving over the road until June 8th, 1976, the Plaintiff received approximately $8,500.00, which was deposited to the joint account of the parties.

(g) The Plaintiff personally and by his personal effort and energy constructed the shed located on the real property described in Paragraph Four (4) above, thus increasing the equity of the parties in and to that property.

(h) By the Defendant's own admissions, the marital home was furnished with furniture and furnishings brought to the marriage and owned prior thereto, by the Plaintiff and in which the Defendant had no equity.

(i) The son of the Defendant resided in the marital home of the parties from June 1975 through May 1977, during which period he was supported principally by funds provided by the Plaintiff, although the Plaintiff has reason to believe and does believe, that the minor child was receiving support from his father during that period.

(j) All sums "borrowed" by the Plaintiff from the Defendant were fully repaid.

(k) At all times during the marriage, and prior to the filing of the dissolution action, by the Defendant, the Defendant managed, reconciled and wrote virtually all checks and withdrawals on the joint checking and savings accounts of the parties as a result of the complete trust and confidence which the Plaintiff had in the Defendant, but the Plaintiff believes and has reason to believe that the Defendant diverted monies and funds from those joint accounts to other accounts maintained by her in her own name or in the names of her two children by a prior marriage or otherwise for her own purposes.

(l) The cancelled checks and bank records pertaining to the joint checking and savings accounts of the parties, as well as the accounts of Playgrounds, Inc., a corporation owned by the Plaintiff, on which the Defendant had signature authority, are and have been continually in the possession of the Defendant and not available to the Plaintiff.

WHEREFORE, the Plaintiff, OPREL WOOD, demands judgment against the Defendant relieving him from the Final Judgment entered in the action styled DORIS LEE WOOD vs. OPREL WOOD, Case No. GCF-77-2574 in the Circuit Court for Polk County, Florida and recorded on February 7th, 1978 in Official Records Book 1792, page 399 of the Public Records of Polk County, Florida and for such other and further re-

lief as the court may determine to be right and equitable.

A. H. Lane of
LANE, MASSEY, TROHN,
CLARKE, BERTRAND &
SMITH
P.O. Drawer J
Lakeland, Florida 33802
(813) 688-7944
Attorney for Plaintiff

IN THE CIRCUIT COURT IN AND FOR
POLK COUNTY, FLORIDA

IN RE: THE MARRIAGE OF
DORIS LEF WOOD,
Petitioner/Wife,

and No. GC F 77 2574

OPREL WOOD,
Respondent/Husband.

Filed: January 23, 1978

MOTION FOR REHEARING

The Husband in the above styled cause, OPREL WOOD, moves the Court for a rehearing of the above styled action and would show as grounds therefor, as follows:

1. That a Final Hearing was held in the above referenced case before Circuit Judge Gunter Stephenson on Friday, January 20, 1978.

2. At said hearing were present the Wife, DORIS LEE WOOD, her attorney, Guerry Dobbins, and the Husband's attorney, Richard C. May.

3. Reasons for the Husband's failure to appear at the Final Hearing are as follows; the Husband, OPREL WOOD, had made repeated attempts and overtures to the Wife toward effecting a reconciliation. On Thursday evening, January 19, 1978, DORIS LEE WOOD represented in person to the Husband that Final Hearing on the above referenced case had been continued for a period of thirty (30) days. The Wife made such representation knowingly to the Husband, and with full knowledge that such representation would in all probability cause the Husband, OPREL WOOD, to believe that the hearing had in fact been continued. The Husband, justifiably relying upon said representation of the Wife, believed that the hearing had been continued. The Husband therefore went to his place of employment as usual on Friday, January 20, 1978 and

was therefore not available to give testimony at the Final Hearing on this cause.

4. As a result of the aforementioned representations of the Wife, DORIS LEE WOOD, the Husband, OPREL WOOD, was not available to give testimony in the Final Hearing of the above styled cause.

5. The Husband's position in this cause has been greatly prejudiced due to his absence at the hearing and inability to give testimony thereat. The Husband is prepared to rebut and affirmatively disprove testimony given by the Wife which directly relates to equities in the marital home and other marital property of the parties.

WHEREFORE, the Husband, OPREL WOOD, in an effort to have this case decided upon its merits, and to prevent a fraud upon this Honorable Court, requests a rehearing upon all pertinent issues.

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Rehearing has been furnished by U.S. Mail this 20th day of January, 1978, to: GUERRY DOBBINS, ESQ., 120 E. Pine Street, Lakelane, Florida 33802, Attorneys for Wife.

STANLEY, WINES, ROTH,
WILLIAMS & SMITH, P.A.

/s/ Richard C. May
Richard C. May, Esq.
Post Office Box 1606
Lakeland, Florida 33802
Attorneys for Husband

IN THE CIRCUIT COURT OF
POLK COUNTY, FLORIDA

OPREL WOOD,

Plaintiff,

versus No. GC G 78-3392

DORIS LEE WOOD,

Defendant.

MOTION FOR REHEARING ON MOTION TO DISMISS AND TO CONSOLIDATE

On March 19, 1979, the court entered its Order in this cause in which it dismissed, without prejudice, the complaint filed on November 29, 1978. The court held that false testimony or misrepresentation as alleged in the complaint did not constitute fraud on the court on

which to support the independent action. The Plaintiff by and through his undersigned attorneys, represents to the court that the complaint in this action was filed on November 29, 1978, within one (1) year after the entry of the Final Judgment on February 1, 1978, which is attacked in the complaint. The complaint alleges ultimate facts, which if proven, will establish intrinsic fraud and material misrepresentation made by the Defendant giving rise to the provisions of the Final Judgment assaulted. It is inherent in the court's order that had the complaint been filed as a motion under the provisions of Rule 1.540(b), Florida Rules of Civil Procedure, it would have withstood the Motion to Dismiss. It is therefore, apparent that the filing of the independent action was tantamount to a misnomer of the pleading and a procedural departure from Rule 1.540(b), Florida Rules of Civil Procedure, and that the ends of justice would best be served by consolidating this action with the case of In Re: The Marriage of Doris Lee Wood, Wife, and Oprel Wood, Husband, Case No. GC-F-77-2574, where the complaint would be treated as a Motion to Vacate the Final Judgment as provided under Rule 1.540(b), Florida Rules of Civil Procedure. In addition, the Plaintiff suggests that the grounds for the Order of Dismissal were not properly raised by the Motion to Dismiss, which simply asserted the ground that the Plaintiff had had ample opportunity to litigate the issues raised in the parent action. The court entered its Order as stated above on the ground that the complaint did not allege fraud on the court.

WHEREFORE, the Plaintiff, OPREL WOOD, respectfully moves the court to enter its Order granting a Rehearing on the Motion to Dismiss and thereupon to enter its Motion Consolidating this action with Case No. GC-F-77-2574, in this court.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to L. Guerry Dobbins, Jr., Esquire, P.O. Drawer 1785, Lakeland, Florida 33802, this 27th day of March, 1979.

/s/ A. H. LANE
A. H. LANE of
LANE, MASSEY, TROHN,
CLARKE, BERTRAND &
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Attorney for Plaintiff